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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,991	07/24/2006	Wolf Bertling	17334-004US1	1187
26191 7590 06/04/2008 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
HUFF, SHEELA JITENDRA				
ART UNIT		PAPER NUMBER		
1643				
MAIL DATE		DELIVERY MODE		
06/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,991

Applicant(s)

BERTLING, WOLF

Examiner

Sheela J. Huff

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-60 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 31-60 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/US)
Paper No(s)/Mail Date 10/26/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: EXHIBITS A and B

DETAILED ACTION

Information Disclosure Statement

The IDS filed 10/26/06 has been considered and an initialed copy of the PTO-1449 is enclosed.

Specification

The disclosure is objected to because of the following informalities: the conventional way of spelling "interleukin" is --interleukin-- not "interleucine"..

Appropriate correction is required.

Claim Objection

Claim 38 is objected to because of the following informalities: see objection to the specification above. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 54 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 54 it is not clear why the word mamma is underlined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 31-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO97/17084 (English translation is US patent 7262167) as evidenced by WO 03/022883 (3/20/03) in view of Green or US 2002/0192162, Andrusis Jr. et al US 6140346, Hill et al Cancer Research vol. 62 p. 7254 (2002) and Accession Number 1998:80524 Maini et al (1997) (abstract only).

The English translation of WO97/17084 discloses a medicament of annexin V and patient derived apoptotic tumor cells and its use to treat tumors (abstract and columns 7 and 10). The amount of annexin V used varies by the amount of tumor cell protein (col. 9 lines 12-35 and col 12). The annexin V is non-human annexin V (ie

chicken) (col. 9, lines 34-45). The medicaments are made in injectable form (Example 2). WO 03/022883 (which had many of the same authors as the 1997 WO document) discloses annexin V and the sequence of annexin V and it is 100% identical to SEQ ID NO. 1 and 2 of the instant invention (see exhibits A and B for sequence alignment).

The only difference between the instant invention and the reference is that combination of annexin V with cytokines and the use of the medicament to treat mammary tumors.

Green discloses the use of annexin V and therapeutic radioisotopes to treat a variety of different cancers including mammary cancer (paragraph [0020]).

Andrulis Jr. et al disclose that IL-012, IL-1beta and TNF alpha are used to treat tumors (col. 7, lines 42-48).

Hill et al discloses that IL-12 and GM-CSF treat tumors (see entire reference).

Accession Number 1998:80524 discloses that IL-2, IL-6, IL-7 and IL-12 are known to treat tumors.

In view of the fact that it is known in the art that annexin V and cytokines can separately treat tumors, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the two with the expected benefit of treating tumors. "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). Furthermore, since annexin is used to treat

mammary cancers, it also would have been obvious to treat mammary cancers. With respect to claims 39-43, 46-47 and 56-57, it is obvious from the primary reference that dosages and amounts injected are within the purview of one skilled in the art. Optimization of dosages is within the purview of one skilled in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheela J. Huff whose telephone number is 571-272-0834. The examiner can normally be reached on Tuesday and Thursday from 5:30am to 1:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sheela J Huff/

Art Unit: 1643

Primary Examiner
Art Unit 1643

sjh